

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

University System of New Hampshire,
Keene State College

v.

Keene State College Education Assoc.,
Affiliated with NHEA/NEA

CASE NO. S-0601:5

DECISION NO. 79012

In Re:

Keene State College Education Assoc.,
and Keene State College, University
System of New Hampshire

CASE NO. S-0601:6

Petition for Declaratory Judgment

APPEARANCES

Representing the University System of New Hampshire,
Keene State College:

Nicholas DiGiovanni, Esquire, Counsel
Gary Wulf, Executive Director for Resource Administration
Richard Gustoffson, Assistant Dean

Representing the Keene State College Education Association:

David Smith, UniServ Director
Dr. William Sullivan, President
Professor Charles Weed

BACKGROUND

The longstanding matter of the organization and representation of the faculty at Keene State College and the attempt to negotiate a contract between Keene State College of the University System of New Hampshire and the Keene State College Education Association, affiliated with New Hampshire Education Association/NEA has produced two additional cases. These two cases are an unfair labor practice charge brought by the University System of New Hampshire against the Keene State College Education Association and a petition for declaratory judgment filed by letter by the Keene State College Education Association.

The Board held a hearing on both matters at the Board's offices on June 12, 1979, pursuant to notice.

The charge by the University System of New Hampshire, Keene State College, against the Keene State College Education Association alleges that the Association violated the ground rules for negotiations agreed to by the parties. The allegations are that on July 17, 1978, negotiators for the parties agreed on ground rules among which are the following:

"6. All correspondence pertaining to negotiations shall be between the chief negotiators. Carbon copies will be sent to the KSCEA President and the UNH Director of Personnel Services

11. The parties may communicate with their respective constituencies regarding negotiations. Any media release concerning a negotiation matter shall be mutually agreed to between the parties unless at impasse."

Evidence produced by the University System of New Hampshire at the hearing and the essence of the charge are that the Keene State College Education Association violated the ground rules on several occasions. Specifically, it is alleged that Charles Weed, represented by the KSCEA directly communicated with the Board of Trustees on a bargainable subject, namely the waiver of exclusivity concerning promotion, tenure and other personnel decisions (see Board Decision 780028), and that further he communicated with the trustees directly by sending to Jere Chase, Chairman of the Trustee Personnel Committee a petition signed by faculty members expressing their opinions on that subject. Among the signatures on said petition was that of William Sullivan, President of the KSCEA. These communications were not denied by the KSCEA at the hearing. In addition, it is alleged that the President of the Association wrote a letter to the Chairman of the Board of Trustees of the University System of New Hampshire regarding negotiations and that this letter was released to the press and in fact published in the Keene State College newspaper and sent to trustees and other officials. This allegation was not denied by the KSCEA at hearing.

Finally, the allegations are that despite a discussion at negotiations held on April 18, 1979, concerning communications, the Association directly petitioned the Board of Trustees on April 21, handing out statements on the status of negotiations, seeking to speak on the subject and producing picketers at the Board of Trustees meeting held on that date at Keene State College.

The answer of the Association to these charges is two-fold. First, the Association states that the actions of the University System in not following guidelines, including release of information concerning negotiations and in violating

the time schedules for negotiations stated in the ground rules somehow excuse the Association from following the ground rules. In addition, the allegation is made that the ground rule 11 refers only to communications on subjects which are not at impasse and in fact the communications in this matter were concerning personnel matters, a subject which was at impasse at the negotiating table.

The other matter before the Board is a letter written by Professor William Sullivan, President of the Keene State College Education Association dated April 13, 1979 to Edward J. Haseltine, Chairman of the Public Employee Labor Relations Board. This letter "seeks an advisory opinion" in that it requests an opinion on the question of whether the then present pace of negotiations, given the ground rules which stated that two negotiating sessions would take place each month, constituted "meeting at reasonable times" as required by RSA 273-A:3 I. That section requires the parties to bargain in good faith which includes "meeting at reasonable times and places in an effort to reach agreement ...".

The University System has responded to the request by the Keene State College Association for advisory opinion by denying that an advisory opinion is available, whether or not in the form of a declaratory judgment, both because the letter is an inappropriate means for filing the declaratory judgment request and because the facts contained in the letter as to reasonableness of meeting times and places are better the subject of an unfair labor practice if there is an allegation that the System has been acting unfairly.

FINDINGS OF FACT
AND RULINGS OF LAW

First, the Board finds that in connection with the request for advisory opinion, even if the Board were to excuse the defects in format in raising the issue by letter, the letter and petition should be dismissed under Board Rule 8.1 since the subject matter of the petition is in fact before the Board in the stated answer of the Keene State College Education Association to the unfair labor practice charge. The declaratory judgment action is therefore dismissed although as part of the defense of the Keene State College Education Association, the matters raised therein will be discussed below.

The Board has stated in previous decisions that the ground rules set by the parties to negotiations are an important part of those negotiations and should be respected and followed by the parties. See SEA of New Hampshire, Inc. v. Plymouth State College and Keene State College decisions #S-0309 and S-0312 dated July 11, 1977.

The Board finds as a matter of fact that the parties did indeed enact the ground rules. Further, the Board reads those ground rules to allow media releases by either party only if all issues are at impasse since to rule otherwise would allow the parties to negotiate on some issues under the guidelines and yet, on other issues, to communicate freely in the media on issues at impasse. This would be an unworkable result. The Board further finds that the ground rules mean that they say regarding the sole method for communications between representatives of the parties.

The Board holds that the President of the Association, Professor Sullivan, by participating in the signing of the petition which is one of the alleged communications and by preparing and sending the "open letter" concerning issues pertinent to negotiations violated the ground rules. Further, the activity surrounding the Board of Trustees meeting certainly involves some of the issues in negotiations, namely the promotion and tenure issues and also was done with the knowledge of the Association. The communication by Professor Weed to Mr. Chase along with a copy of a proposal at negotiations, given to him by Professor Sullivan is questionable since the Board cannot conclude that Professor Sullivan knew what use would be made of that proposal and that communication is not found to have been sustained as an unfair labor practice. Nevertheless, the Board has sufficient facts before it to find an unfair labor practice as charged in that the ground rules were violated. The Board stresses the importance of following the ground rules or negotiating their change prior to any departure from them since the establishment of ground rules and the following of the ground rules are critical to harmonious labor relations and the encouragement of agreements.

The Board notes further the fact that the employer in this case has commented in its publication For and About People concerning the negotiations and that certain trustees have communicated directly during the negotiating process and election process with individual members of the bargaining unit although not on specific items at the table. The Board further recognizes as the University System admitted at the hearing that the ground rules concerning numbers of meetings were violated when the chief negotiator for the System resigned. The frustrations of the Association and its members in this process which has affected directly many of the members' promotion, tenure and job security as well as their pay and benefits could understandably lead to actions such as those which took place. Such actions and frustrations, however, do not excuse the violation of the ground rules by the Association.

The Board has observed the process of these negotiations and is not unmindful of the unique situation faced in negotiating an initial contract for an academic faculty bargaining unit.

Nevertheless, the Board feels that given the history of this particular case, the pace of negotiations has been too slow. The Board, therefore, finds that the negotiation process must be accelerated by the scheduling of negotiating sessions at more frequent intervals than those which have been held. The Board finds that negotiating sessions of at least 24 hours per month should be scheduled by the parties. The Board leaves it to the parties to schedule this number of negotiating sessions as a minimum (and more if possible), and further requires that the parties report to the Board the scheduling of sessions and the general status of negotiations following each session. The Board does not require a detailed analysis of negotiations but rather general statements of progress, agreements reached, issues at impasse and the like in a general way to monitor the progress of negotiations.

ORDER

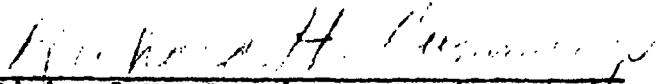
In light of the above, the Board issues the following order:

1. The request for advisory opinion filed by the Keene State College Education Association is hereby dismissed.

2. The unfair labor practice charges brought by the University System of New Hampshire against the Keene State College Education Association charging a violation of RSA 273-A:5 II (d) because of the violation of negotiation ground rules is sustained and the KSCEA is ordered to cease and desist communications with the media or employer by means other than those stated in the ground rules. Both parties are ordered to observe the details and requirements of said ground rules as the only means for communications between the parties and to the public as stated in said ground rules. Nothing in this order requires that the ground rules not be changed if they can be changed by mutual agreement of the parties in negotiations.

3. The parties are further ordered to schedule not less than 24 hours of negotiations per month until further order of this Board. In the first instance, the parties shall have the right to schedule the allocation of said minimum time period in specific negotiating sessions. In the absence of agreement on the scheduling of such sessions, the Board will, upon application of either party, schedule said sessions for the parties.

4. The Board orders the parties to inform the Board as to the scheduling of further negotiation sessions and, after each negotiation session, directs each party to inform the Board as to the general status of negotiations in a way consistent with this order.


Richard H. Cummings, Acting Chairman
Public Employee Labor Relations Board

Dated: June 19, 1979

Members James Anderson and Joseph Moriarty also voting. All concurred. Board Clerk Evelyn LeBrun and Board Counsel Bradford Cook also present.